Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

BRADFORD PAUL LEE, *et al.*,
BELVA MARY LEE FRANCOIS
Petitioner

v

ENTERPRISE LOU-TEX NGL
PIPELINE L.P.
Respondent

On Petition for A Writ of Certiorari
To The Supreme Court of Louisiana

PETITION FOR A WRIT OF CERTIORARI

Belva Mary Lee Francois
In Proper Person
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62 pg
f/o

QUESTION PRESENTED

ISSUES: Who has jurisdiction over an *interstate, liquid, petroleum pipeline* facility – federal laws enacted by the United States Congress as empowered by Article 1 § 8, cl. 3 of the United States Constitution or state laws enacted by the legislative body of one state, Louisiana?

RESTATEMENT OF THE ISSUE: When said facility falls under federal jurisdiction and *conflicts* with states laws in not giving said facility eminent domain nor expropriation attachment, should a landowner not have the right to refuse to sign a right of way agreement, and one especially not in her "best interest," without the duress of a lawsuit?

FURTHER RESTATEMENT OF THE ISSUE: Should a trial court judgment not be reversed and monetary compensation be rewarded to injured party when federal jurisdiction pre-empts state jurisdiction and awarded a Right of Way area to a frivolous lawsuit which has violated a U.S Citizen's 5th and 14th Amendment rights and civil rights?

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OPINIONS BELOW

Denial to review by the Louisiana Supreme Court on February 8, 2002 is reproduced in *Appendix, pp. 1.* Opinion of the Louisiana Third Circuit Court of Appeal, Lake Charles, Louisiana was rendered on October 31, 2001 is unpublished and is reproduced in *Appendix, pp. 2.* Sixteenth District Court of St. Martin Parish, Louisiana judgment was rendered on August 15, 2000 and is reproduced in *Appendix, pp. 16.* All appeals were timely filed.

JURISDICTION

The denial for review by the Louisiana Supreme Court was rendered on February 8, 2002. This Court has jurisdiction under 28 U.S.C. § 1257.

INTRODUCTION

Enterprise Lou-Tex NGL Pipeline L.P., a Texas partnership company, filed a lawsuit on June 8, 2000 against Petitioner, Belva Mary Lee Francois, and twenty-two (22) other unsigned landowners for an *interstate right of way* on a tract of land they shared joint-ownership in St. Martin Parish, Louisiana. Enterprise's right-of-way agent, David S. L. Dennis, letter dated March 10, 2000 to Petitioner stated, "(Enterprise) is putting an interstate pipeline across land in which you own an interest near Parks, Louisiana. The property is located in the Southeast quarter (SE/4) of Section 32, Township 9 South, Range 6 East, St. Martin Parish, Louisiana." (Court Transcript, Vol. 1, pp. 131-138) (Defendant's Exhibit 18, Vol. 2, pp. 265-267) Right of Way and Servitude Agreement attached to letter asked for a temporary work space and,

> ....a right of way and servitude to lay, construct maintain, use, alter, inspect, operate, repair, replace, change the size of and remove two (2) pipelines....the right of way herein granted shall have a permanent width of 30 feet..... Grantor agrees not to build, create or construct any building, engineering works, or other

> improvements or structures on or over said pipelines and servitude, nor permit the same to be done by others.(Court transcript, Vol. 1 pp. 131-138) (Defendant's Exhibit 18, Vol. 2, pp. 265-267)

Letter dated May 16, 2000, from Enterprise's employee and attorney-in-fact, Mr. Paul Lair, to Petitioner stated, "Re: Enterprise Lou-Tex NGL, Pipeline, L.P. Construction Pipeline from Breaux Bridge, Louisiana to Mont Belview, Texas." (Court Transcript, Vol. 1, pp. 33) Mr. Paul Lair when questioned by Enterprise's attorney during trial court proceedings regarding construction route testified, "Its an overall plat or map of the project which originates in Breaux Bridge, Louisiana and terminates in Mount Belview, Texas. (Court Transcript, Vol. 2, pp. 363) Enterprise employee and attorney, Mr. Michael Johnson testified products will be transported, ".....from Louisiana Section 28 to Mont Belview"(Court transcript, Vol. 2, pp. 396) The start of pipeline route at the Section 28 facility is near Parks and Breaux Bridge, Louisiana.

New right of way construction would parallel and increase right of way from *75 feet to 105 feet and add up to seven (7) pipelines on Section 32*. Enterprise presented Petitioner with a *normal right of way package* and did not threaten expropriation until it was unable to obtain all landowners' signatures. Past right of way agreement were non-expropriated right of ways.(Writ to Supreme Court of LA, pp. 1)

CONSITIUTIONAL LAWS, STATUTES & FEDERAL CODES INVOLVED

Petition for Expropriation cited Louisiana state statutes *La. R.S. 19:2(8)* and La. *R.S. 45.251*. *See Appendix, pp. 23* for reproduction of *La. R.S. 19:2(8) See Appendix, pp. 24* for reproduction of *La. R.S. 45.251*. *La. R.S. 19:2(8)* gives *common carrier* pipeline facilities per definition use in *La. R.S. 45.251* the right to expropriate private property. *La. R.S.45.251* is a Louisiana Public Service Commission, *Title 45*, statute which states its scope of jurisdiction is only within the state of Louisiana. *La. R.S. 45.252* states, "All pipe line through which petroleum is conveyed from one point in this state to another point in the state are declared common carrier as defined in *45.251*

and are placed under the control of and subject to regulations by the Louisiana Public Service Commission." *La. R.S. 45.253* states, "The Louisiana Public Service Commission shall adopt, change, or make reasonable changes or regulations to regulate all common carriers pipe lines through which petroleum is conveyed from *one point in the state to another point in the state."* Referring to this statute, Petitioner argued, ".....I don't see how they can use a Public Service Commission statute when the Public Service Commission, itself, is basically concerned with state issues and this is an interstate pipeline. (Court transcript, Vol. 2, pp. 511) (Appellant's Original Brief, pp. 6)(Writ to the Supreme Court, LA, pp. 2) *La. R.S. 30.691* defines *intrastate liquefied petroleum*, the products transported by Enterprise ".....as those gases derived from petroleum or natural gas.....transported and utilized wholly within the state of Louisiana where the transportation thereof is exempt from federal regulation."

La. 45.252 and *La. 45.253* clearly states *Title 45* jurisdiction is for common carrier commerce within the borders of Louisiana. *La. R.S. 30.691* defining Louisiana intrastate commerce within its border states this commerce has no federal jurisdiction. This being the case, Enterprise interstate facility falls under federal jurisdiction by starting in Louisiana and crosses state line into Texas. Petitioner's court presentation stated, "I know everybody probably knows this, but from Breaux Bridge, Louisiana to Mont Belview, Texas, makes it an interstate pipeline, and I'm emphasizing that point.....that this is an interstate pipeline and not an intrastate pipeline."(Court transcript, Vol. 2, pp. 449)

Article 1, § 8, cl. 3, of the United States Constitution gives Congress the right "To regulate commerce with foreign nations, and among the several states....." *The Interstate Commerce Act of 1887* enacted by Congress § 1 states, ".....That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property.....for a continuous carriage or shipment from one State or Territory of the United States.....to any other place in the United States...." The purpose of this act was to regulate charges, tariffs, made by interstate carriers to third parties and stated they "shall be reasonable and just."

The Interstate Commerce Act of 1887 § 11, states, "That a commission is hereby created and established to be know as the

Inter-State Commission." *Section 12* of The Interstate Commerce Act of 1887 states "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act....."

The Interstate Commerce Act of 1887 enacted tariff rules and regulations governing railroad transportation between states. The *Hepburn Act of 1906* § 1 extended this jurisdiction to include interstate pipelines and, "shall apply to any corporation for any person or persons engaged in the transportation of oil or other commodity.....who shall be considered and held to be common carriers within the meaning and purpose of this Act.".

Mr. Michael Johnson Enterprise's employee and attorney, court testified the Interstate Commission has jurisdiction over Enterprise's new pipeline construction in court transcript, Vol. 2, pp. 387-388,

> When you break down the products and you go from methane, which is the natural gas that comes into your house, then the next products down the chain are the ethanes, the propanes, the butanes and the natural gasoline. When those are combined before fractionation, they're called raw make. And those pipelines have always been classified as oil pipelines and had been regulated under rules promulgated by the Interstate Commerce Commission the ICC.

The *Code of Federal Regulations, Title 18 § 1.101* (a) "name this commission to be the Federal Energy Regulatory Commission." Mr. Michael Johnson court testimony, Vol. 2, pp. 388, said that The Federal Energy Regulatory Commission, FERC, is this commission and have jurisdiction over Enterprise's interstate pipeline facility,

> You may recall during President Carter's time, he combined various agencies and he combined the FPC, the Federal Power Commission, and the ICC into the Federal Energy Regulatory Commission, which is now commonly referred to as FERC. So, while you had a combination of the two agencies, the different types of pipelines are nonetheless regulated on a separate basis. So, if you're a natural gas pipeline, you're under

> the old FPC rules. If you're a liquids line, like ours is, you're under the ICC.

The Federal Energy Regulatory Commission, FERC, is entitled to regulated Enterprise interstate, petroleum, oil, liquid facility for interstate tariff regulations under the *Code of Federal Regulations, Title 18 § 341.1*, "Carrier mean an oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act." The Interstate Commerce Act enacted by the United States Congress gave this Commission the right to regulate interstate tariffs. The Code of Federal Regulations, laws enacted by the United States Congress, regulating Enterprise's interstate, petroleum facility under *Title 18,* §s *341.0 - 341.15* and the Interstate Commerce Act before it, has *No* laws, statutes, or codes giving Enterprise interstate, petroleum facility eminent domain attachment and the right to expropriate private property.

This being the case, Petitioner's *5th Amendment* rights have been violated and states, "No person shall.....be deprived of life, liberty or property without due process of law....."

This being the case, Petitioner's *14th Amendment* § 1 rights have been violated and states,

> All person born or naturalized in the United States, ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or *property, without due of law; nor deny any person within its jurisdiction the equal protection of the laws*

This being the case, Petitioner's civil rights has been violated per *U.S.C. Title 42 § 1981*, see *Appendix, pp 23* for reproduction

This being the case, Petitioner's civil rights has been violated per U.S.C. *Title 42 § 1982*, Property Rights of Citizens, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to *inherit, purchase, lease, sell, hold, and convey real and personal property."*

CONCISE STATEMENT

Court proceeding was a *trial by judge* in the Sixteenth District Court in St. Martin Parish, Louisiana. Civil litigation was against 15% unsigned landowners on Section 32. Petitioner represented herself *pro se* and the only landowner to provide trial court with 26 exhibits. Petitioner was the only landowner to filed *Original* and *Reply* Briefs with the Third Circuit Court of Appeal in Lake Charles, Louisiana. Petitioner attended *Oral Argument* with the Third Circuit Court of Appeal in Lake Charles, Louisiana. Petitioner was the only landowner to file a *Writ of Certiorari* with the Supreme Court of Louisiana.

Defendant's Exhibit 14, letter dated July 14, 2000 from the *Federal Energy Regulatory Commission, FERC,* Mr. Robert J. Cupina, Director, Division of Tariffs and Rates-Central is *critically* important to show trial court was made aware Enterprise's interstate petroleum, pipeline facility had no federal eminent *domain attachment. Defendant's Exhibit 14* stated, ".....the proposed pipeline would be regulated as a petroleum or petroleum products pipeline.....and no right of federal eminent domain attached to such facilities." See reproduction of Defendant's Exhibit 14 in *Appendix, pp 25.*(Court transcript, Vol. 2, Defendant's Exhibit 14, pp. 255-256) (Appellant's Original Brief, Assignment of Error 3, pp. 20-21) (Appellant's Reply Brief, pp. 3) (Writ to Supreme Court, LA, pp. 4) Enterprise products can be referred to as liquids or petroleum. Enterprise made no rebuttal to *Defendant's Exhibit 14 from FERC* to address the threshold issue stating its interstate, petroleum pipeline facility had no eminent domain attachment. (Court transcript, Vol. 2, pp. 516-520)

Mr. Robert J. Cupina's letter, *Defendant's Exhibit 14*, also stated *interstate natural gas* facilities are given eminent domain attachment and a certificate of public convenience and necessity. The federal government have many strict rules and regulations to be followed by a *natural gas pipeline facility* before giving eminent domain attachment to its interstate facility as quoted below. Enterprise *interstate petroleum facility*, on the other hand, with no eminent domain attachment and no certificate of public convenience and necessity escaped any accountability to landowners.

> Before constructing an interstate natural gas pipeline, the sponsor must obtain a certificate of public convenience and necessity under the Natural Gas Act by filing a complete application describing the purpose, need, design, location and environmental impact of the proposal and setting forth the rates, terms, and condition of of service in a pro forma tariff. This process includes various public notices and opportunity for comment as well as notification requirements to landowners on whose property the gas pipeline would be built. At the conclusion of this process, which might take months or even years, depending on the issues involved, the Commission typically issues a certificate subject to environmental and economic conditions that mitigate construction impacts and ensure open access operation

Petitioner reading from *Defendant's Exhibit 14,* FERC, as written by Mr. Robert J. Cupina also emphasized this important part of the letter,

> I contacted Messrs. Leo Bermudez and Paul Lair of Enterprise, and they confirmed that the proposed line would be used to transport natural gas liquids such as ethane, propane and butane from storage facilities in Beau Bridge, Louisiana to a separation and storage plant in Mt. Bellview, Texas.....The Federal Energy Regulatory Commission (Commission) regulates such pipelines under the Interstate Commerce Act as to rates and tariffs, Under Part 341 of the regulations (18 C.F.R. 341)..... The tariff filing is due when service commences, and Enterprise's representatives with whom I have spoken say that Enterprise is in the process of preparing its tariff filing. (Court transcript, Vol. 2, pp.518)

In conjunction with *Defendant's Exhibit 14* from FERC stating this is a movement of products from one storage facility in Louisiana to one in Texas, Petitioner argued this was an expansion of an inter-plant transportation route. (Court transcript, Vol. 2, pp. 498-499)

(Appellant's Original Brief, Assignment of Error 3, pp. 21) (Appellant's Reply Brief, pp. 2-3) (Writ to the Supreme Court LA, Assignment of Error 1, pp. 17)The Section 28 Storage Facility, the Mont Belview facility and the new interstate pipeline facility are owned by one partnership company "Enterprise Products GP, LLC, is the general partner for Enterprise Products Operating L.P. and Enterprise Lou-Tex NGL, Pipeline L.P." (Court transcript, Vol. 2, pp. 533) (Court transcript, Vol. 2, Defendant's Exhibit 17, pp. 264) There is no third party activity at the start and no third party activity at the end of this route. Enterprise employees testimonies claiming otherwise is unproven, unreliable and contradiction in claiming common carrier status and has not legal validity. (Oral Argument, Third Circuit Court of Appeal)

Common carrier pipeline as defined by Mr. Michael Johnson, "is a pipeline that will accept deliveries of product to it from third parties, and for a fee that's called a tariff, transport those products to another locations and deliver it to the third party." (Court transcript, Vol. 2, pp. 387)(Oral Argument Third Circuit Court of Appeal) Enterprise' employee and attorney-in-fact, Mr. Paul Lair, testified, "We have storage well facilities in the Breaux Bridge area, which we call *Section 28 where we store excess demand at this time.....* "(Court transcript, Vol. 2, pp. 367) The Section 28 Storage facility is located near Parks and Breaux Bridge, Louisiana and new construction will cross Section 32 at the start of route at this storage facility. Testimony by Mr. Paul Lair answered, "*I'm not aware of any*" when asked by landowner, Mr. Ebow on distribution of products once they reach Mont Belview, TX, *"Are these products being sold to a third party government or to any private, public or government agencies?"(*Court transcript, Vol. 2, pp 377) (Appellant's Original Brief, Assignment of Error 3, pp. 21)(Writ to the Supreme Court, LA, Assignment of Error 1, pp. 17)

Petitioner's Original Brief to the Third Circuit Court of Appeal, Assignment of Error 3, pp. 21 regarding this issue argued,

> We have testimony from Mr. Paul Lair the
> Section 28 Facility is only a storage location;
> therefore, no pick-up of third party products.
> We now testimonial from Mr. Paul Lair the
> Mont Belview facility in not a third party

> distribution facility making common carrier status a non-issue. Enterprise interstate internal transportation route from one warehouse location to another warehouse location, in other words, is an internal business operation. (Court transcript, Vol. 2, pp. 372, 373, 377)

Petitioner's Original Appellant Brief to the Third Circuit Court, Assignment of Error 3, pp. 20-21, regarding *Defendant's Exhibit 14*, FERC stated, "Enterprise interstate, liquid pipeline route from Louisiana (any point in Louisiana) to Texas common carrier status is a non-issue before or after construction with no federal expropriation attachments given to a liquid pipeline route."

Petitioner's Writ to the Supreme Court of Louisiana, pp. 4, relating to *Defendant's Exhibit 14*, FERC, argued, "….. proposed pipeline would be regulated as a petroleum or petroleum products pipeline….. no right of federal eminent domain attaches to such facilities. The Federal agency in charge of interstate eminent domain rights will not give liquid, petroleum route this attachment…..this cases should have never proceeded to trial court."

Petitioner's Writ to the Supreme Court of Louisiana, pp. 4-5, further argued,

> Listing interstate tariffs with FERC is not a criteria proving Enterprise's new construction has eminent domain rights on Section 32 and can list before or after construction and cannot expropriate private property. Landowners on Section 32 have no guarantee after construction tariff for third party transportation will be listed with FERC given this is a well-established non-common route….. Enterprise employees, Mr. Lair and Mr. Burmudez, telling FERC it will list interstate tariff was basically drawn into this issue when confronted by FERC per Belva Mary Lee Francois (Ms Francois) calling FERC to question expropriation rights for this interstate, liquid, petroleum construction. FERC had no record of Enterprise interstate pipeline construction prior to Ms.

> Francois contact for which the names of key employees were given to call. (Court transcript Vol. 2, pp. 517-518)

Petitioner in court transcript, Vol. 2, pp. 412, 528-532, argued the reasons this was a bad contract and one not in her "best interest" and was unable to sign. Appellant's Original Brief to the Third Circuit Court again brought this to the court's attention in Assignment of Error 5, pp. 25,

> This is a BAD contract for landowners in an active oil and gas field for the following reasons: FIRST, does not protect landowner's mineral rights in an active oil and gas field; SECOND, no time limit for end of contract; THIRD, Grantee asks for release of any and all responsibility or liability for construction after Grantor accepts draft payment; FOURTH, upon termination of right of way and servitude, Grantee may leave pipeline in land; therefore, devaluating Grantor's – property and FIFTH, no environmental mishaps protection *on* a tract of land with up to seven (7) in the future. (Court transcript, Vol. 2, pp. 527-532)

Petitioner informing Enterprise of several reasons why contract was not in her "best interest" for which Enterprise made no effort to address and pointed out this very offensive Right of Way clause,

> Another reason I didn't like this contract, "the consideration recited above includes full and complete payment for any and all damages which the grantor may have sustained or may sustain as a result of any and all operation involved in or related to the construction of the above described pipelines and appurtenances and grantor does hereby," I'm the grantor, "does hereby release and relieve grantee from any and all responsibility or liabilities thereof," So not only do they want a servitude agreement, they want to be relieved of all liabilities. Suppose there is a spill there? (Court transcript, Vol. 2, pp. 529-530) (Court transcript, Vol. 2, Defendant's Exhibit 18,pp.265-266)

Petitioner's Writ to the Supreme Court of Louisiana, pp. 7-8, again defended right not to sign a bad contract agreement,

> Louisiana landowners refusal right to sign an interstate, liquid, petroleum right of way with no federal eminent domain attachments should be applied fairly in all states. Louisiana state statutes have no jurisdiction over federal issues. Louisiana landowners have the same right as landowners in other states not to sign an interstate liquid, petroleum right of way. The only way to prevent misuse of their land is the right to refuse to sign a right of way agreement not in their best interest and prevent them from being at the mercy of liquid, pipelines carriers.

Ms. Francois's Original Brief to the Third Circuit argued regarding landowners *"of color"* on Section 32, , "This tract of land has many small landowners and for those who have not signed right of way agreement a letterhead with a multitude of "named" lawyers and the rush to sign is THREATENING." (Court Transcript, Vol. 2, *Defendant's Exhibit 26*, pp. 316)

Petitioner argued in Original Brief, Assignment of Error 2, pp. 18, to the Third Circuit of Appeal, ".....Enterprise has sought DECEPTIVE negotiation by eluding to the total number of pipelines on this tract of land prior to new construction. This tract has many small landowners who obtained ownership through inheritance and may not know the pipeline history on this tract of land."(Court transcript, Vol. 2, pp. 545) (Appellant's Reply Brief, pp. 5) Appellant's Reply Brief, pp. 5, relating to court transcript argued, "if family landowners who signed were informed of all the activities on Section 32, right of way signatures, without the threat of expropriation, would be DISMAL.....Enterprise chose to be SILENT and not bring attention to all its activities on and near Section 32." (Court transcript, Vol. 2 pp. 545) Landowners Mr. Ebow testified,

> It might seem that because there was a hundred and nineteen people that was approached to sign for this lease right-of-way, and a hundred and seven signed, and I think you said nine have not signed, that we're playing hard ball. No. we're not

> playing hard ball. I travel a lots. I go to all of these places. Some of these people, I knew of them, but I found them or called them and what have you, half of them did not know what they were signing. Ninety-some percent of these people are older, many of them very old. Some of these these younger children who has inherited this land don't even know how to spell ..... I thought it was just a matter of approach, the deceptive type of approach, maybe intimidating them, and this why they signed it" (Court transcript, Vol. 2, pp. 545) (Appellant's Original Brief, Assignment of Error 2, pp. 18)

Another landowner, Mr. Scales testified,

> Yeah, my auntie, they had a guy come over there, you know, intimidated her the same, because you know, I had to read her letter.....they want to give up a hundred dollars.....I could see if they were paying monthly.....But they just want to pay one-time, you know, a one-time thing, and I don't think it's right. So, *they could just be taking minerals* off of our land. (Court transcript, Vol. 2 pp. 545-546) (Appellant's Original Brief, Assignment of Error 2, pp.18)

Petitioner's Reply Brief, pp. 6, regarding landowners experience of being threatened argued,

> Considering the excessive land used by Enterprise on Section 32 and Enterprise's lawyers letterhead listing eighty-seven (87) lawyers ready for legal action, see *Exhibit 26,* Vol. 2 pp. 316, it is understandable concerned landowners had this experience. (Court transcript, Vol. 2, pp. 537, 538, 540,545)

New construction will parallel a well established, non-common carrier, intrastate right of way with 5 (five) previously installed pipeline and *75 feet right of way* and other oil and gas activities currently use by Enterprise and signed by forefathers of many present landowners in the sixties. *Defendant's* Exhibit 22, Vol. 2, pp. 273-279, is a *30 feet right of way* agreement. *Defendant's Exhibit 23,* Vol. 2, pp. 280-292, is another *30 feet right of way*

agreement. *Defendant's Exhibit* 24, Vol. 2, pp. 293-304, is an agreement for a *15 feet right of* way and a *plant right of way to the Section 28 Storage Facility* used by Enterprise to store its products. *Defendant's Exhibit 25*, Vol. 2, pp. 305-515, is a *one (1) acre agreement for a salt water disposal well* currently used by Enterprise. (Court transcript, Vol. 2, pp. 490, 534-535) (Appellant's Original Brief, Assignment of Error 2, pp. 18) (Appellant Reply's Brief, pp. 7-8) (Writ to Supreme Court, LA, Assignment of Error 3, pp. 20)

Petitioner inherited this land and past agreements did not provide for monthly or yearly rental compensation and added to aggravate reasons for not signing right of way agreement. Section 32 multi oil and gas usage by Enterprise with no eminent domain attachment is subject to landowners demanding rental compensation or refusing to sign agreement. Petitioner did ask for rental compensation and was denied by Enterprise. (Court transcript, Vol. 2, pp. 412, 537) (Appellant's Reply Brief, pp. 20)

Petitioner's investigation into this pipeline issue found evidence that another family was being paid annual right of way payments on a different quarter of Section 32. Petitioner presented trial court with this very important agreement call "The Martin Right of Way" and was not allowed into evidence by trial court judge. The Martin property is located on the Northeast quarter of Section 32 and the tract for which Petition for Expropriation was filed is located on the Southeast quarter of Section 32.This is the same *75 feet right of way* as signed by the same landowners and their forefathers in the sixties and is a well-established, non-common carrier right of way. Ms. Francois pleaded, "....look right here. This is not the same – this is. It says 32, Your Honor, look right here."(Court transcript, Vol. 2, pp. 492) The Martin Right of Way Agreement is for fifty years and is paying annual rental compensation. This document was dated May 1, 1966 and was recorded in the St. Martin Parish courthouse in Louisiana on May 24, 1966 by Lillian B. Fuselier, Deputy Clerk in book 546, Folio 532, under entry no. 135722 of the conveyance records.

Petitioner's Original Brief, Assignment of Error 4 pp. 23-25 quoted critical parts of "The Martin Right of Way" showing current, annual right of way payments are being paid to another family for

the same right of way area. Petitioner's Writ to the Supreme Court, LA, pp. 3, Assignment of Error 4, pp. 22, responding to Mr. Michael Johnson testimony of one time payment, Vol. 2 pp. 397, for all right of way agreements, whether expropriated or contractual argued,

> This is an important document proving this is not expropriated land since annual right of way payments are being paid and contrary to a one-time payment for expropriated property. .....Ms. Francois asked this honorable court for a fair and impartial review of this document and included with writ.....Ms. Francois was unable to challenge Mr. Johnson testimony since this exhibit was rejected into evidence and was told by trial court judge she was only able to address documents entered as exhibits.

As afore mentioned, Petitioner could not sign a right of way agreement not in her "best interest." Past right of way agreements, *Defendant's Exhibits 22, 23 and Exhibit 24* clearly protected the mineral rights of landowners, as quoted below, in an active oil and gas field. Enterprise's Right of Way and Servitude Agreement did not protect landowner's mineral rights in an active oil and gas field by making no mention of it,

> The rights herein granted shall not vest in or be construed to vest in Grantee, any right, title or interest in or to the surface (other than the servitude herein specifically provided) or to any minerals or mineral rights in , on under or that may be produced from the property above described, nor as requiring the consent of Grantee to any lease, grant or other contract affecting either the surface, minerals or mineral rights with respect to the above described property (Defendant's Exhibits 22 & 23, Vol. 2 pp.274, 282) (Court transcript, Vol. 2, pp. 530)

As afore mentioned Enterprise Right of Way and Servitude Agreement asked to be release of all liabilities relating to construction once Petitioner accepted compensation. Past right of way agreements, as quoted below, protected landowner's rights from

hazardous oil and gas activities on Section 32 per *Defendant's Exhibits 22, 23 and Exhibit 24,*,

> Grantee assume all risks of and shall indemnify and save Grantor harmless from and against all claims, demands, action or suits…In the event of any suit or action brought against Grantor for or on account of such damages, injury or death, Grantor shall notify Grantee and Grantee shall appear and defend said suit or action at its costs and expense, and will pay and satisfy any judgment that may be rendered therein against Grantor, when such suit or action has been finally determined. Grantor shall not be liable for any damage or injury caused or sustained to Grantee's pipe line, or for the loss of any product transported there, as a result of Grantor's lawful operations (Court transcript, Vol. 2 pp. 274, 275, 283)

Third Circuit Court of Appeal simply *chose to ignore* Petitioner great concerns, as the trial court before it, see reproduction in *Appendix, pp. 14,* relating to this liability clause and environmental mishaps, "Her remaining concerns about release of liability for construction upon acceptance of compensation for construction upon payment and environmental mishaps are not addressed in the judgment." Petitioner argued Section 32 is overburden with a multitude of pipeline constructions and sought protection to no avail under *R.S. 9.3186*, Rights of owners when excessive land demanded. (Court transcript, Vol. 2, pp. 534-535) (Appellant's Original Brief. Assignment of Error 2, pp. 18-19)(Writ to Supreme Court, LA, Assignment of Error 3, pp. 20) Louisiana Third Circuit Court have shown by this statement it has no concern in protecting Petitioner's liability rights on a tract of land with hazardous oil and gas activities and sought to affirm eminent domain attachment to an interstate, petroleum facility with *no state jurisdiction.*

Defendant's Exhibit 16 to Enterprise's project manager for new pipeline construction, Mr. Bermudez, was written by Petitioner inquiring additional information after a telephone conversation. (Court transcript, Vol. 2, Exhibit 16, pp. 260-262) Petitioner *learned* during telephone conversation with Mr. Bermudez, Enterprise has

nine (9) active storage wells on Section 33. Enterprise also has four (4) existing intrastate, non-common carrier pipelines starting at the storage facility and crosses Section 32. The Section 28 Storage Facility is the start of the pipeline route and use by Enterprise to store its liquid products. Geographical this area is a salt dome in nature and conducive for storing Enterprise's products.(Court transcript, Vol. 2 pp. 521-522)

Enterprise transports its products from the Section 28 Storage facility via a 13 mile, non-common route to a company owned facility in Breaux Bridge, Louisiana using the four (4) intrastate pipelines. (Court transcript, Vol. 2 pp. 521-522) (Appellant's Original Brief, pp. 8) Enterprise products are then transported using Enterprise's company trucks to its main facility in Mont Belview, Texas. (Court transcript, Vol. 2, pp. 376)(Appellant's Original Brief, pp. 8) Mr. Michael Johnson testified Enterprise had a ".....desire to have those products transport from Louisiana Section 28, to Mont Belview. (Court Transcript, Vol. 2, pp. 396) Enterprise new construction was to expand a direct route from the Section 28 Storage facility to Mont Belview, TX and replace trucking its products. Enterprise products, unlike natural gas, vapor, which is use by utility companies, need no special mode of transportation and can be trucked. (Court transcript, Vol. 2, pp. 372) (Appellant's Original Brief, Assignment of Error 1, pp. 16)

Mr. Paul Lair, Enterprise's employee and attorney-in-fact letter dated *August 10, 2000, Defendant's Exhibit 17,* responding to Petitioner's letter to Mr. Bermudez, dated July 17, 2000, *Defendant's Exhibit 16,* Vol. 2, pp 521-523, confirmed this is a well-established non-common carrier route ".....the four existing pipelines are inter-plant transmission lines.....certificates that you mention are not applicable to the four existing pipelines.....Tariffs are not applicable to the four existing pipelines." (Court transcript, Vol. 2, Defendant's Exhibit 17, pp. 263, Defendant's Exhibit 16, pp. 260-262) *Defendant's Exhibit 19*, Vol. 2, pp. 268-271, included with Mr. Paul Lair letter dated *August 10, 2000* is a detail map showing past and new construction pipelines will parallel next to each other on Section 32. Pipeline map attached to Right of Way and Servitude agreement initially presented to Petitioner did not include Enterprise four (4) non-common carrier pipelines and presented a *dubiously accounting*

of all pipeline to be located on Section 32. Petitioner's letter to Mr. Bermudez was to obtain an accurate accounting of all pipelines on Section 32.

Petitioner provided trial court with *Defendant's Exhibit 4*, from Ms. Martha Powell, Director of Transportation with the Tariff Division of the Louisiana Public Service Commission, LPSC. This current listing had no intrastate tariff listing for Enterprises past four (4) intrastate pipelines on Section 32. The lack of tariff listing on Section 32 proves Enterprise owns the products stored in the Section 28 Storage Facility and this well-established, non-common carrier route is use for internal transportation. Petitioners argued relating to Enterprise owing products stored in the Section 28 Storage Facility, "Pipeline companies do buy natural gas and petroleum products from the original producers....."(Appellant's Reply Brief, pp. 2). This is the same well-established route for which annual right of way payment are being made to the Martin Family since the sixties. (Court transcript, Vol. 1, Defendant Exhibit 4, pp. 235, 237, 506,508) (Appellant's Original Brief, Assignment of Error 3, pp. 20) (Oral Argument) (Writ to the Supreme Court of LA, Assignment of Error 1, pp. 17)

Petitioner's defense strategy not only included proving Enterprise pipeline facility had no interstate eminent domain attachment but also no intrastate attachment. *Defendant's Exhibit 12*, from the Louisiana Department of Natural Resources, Office of Conservation, Pipeline Division, was answered by the Commissioner of Conservation, Mr. Philip N. Aspordities and states,

> Thank you for your letters dated June 28, 2000 and June 29, 2000, describing the proposed Enterprise Lou-Tex NGL interstate pipeline..... this office does not issue a certificate of transportation, certificate of public convenience and necessity, or expropriations authority for liquid pipelines. In the State of Louisiana, The Office of Conservation only grants that authority for intrastate natural gas transmission pipelines.....The Pipeline Division only regulates liquid pipelines from a safety standpoint. Enterprise Products is an operator in the State of

> Louisiana that has intrastate liquid lines that fall under our jurisdictional safety authority.(Court transcript, Vol. 2, Defendant's Exhibit 12, pp. 249-252, 514- 515) (Appellant's Original Brief, pp. 2) (Appellant's Reply Brief, pp. 2) (Writ to Supreme Court, LA, Assignment of Error 2, pp. 19)

The State of Louisiana, Pipeline Division, as the federal government, FERC, only gives Public Convenience and Necessity Certificates and eminent domain attachment to natural gas transmission lines. This certificate would clarify the nature of the legal proceedings relating to expropriation and *"taking"* of private property which is protected by state and federal constitutional laws. (Court transcript, pp. 514-516) (Appellant's Original Brief, p. 2-3) (Appellant's Reply Brief, pp. 6) (Writ to Supreme Court, LA, pp. 19) Mr. Michael Johnson, Enterprise's employee and attorney testified, Vol. 2, pp. 388, it was not necessary for Enterprise to obtain this certificate. Enterprise interstate, petroleum facility would not be given this special certificate by the state and federal government. Enterprise's products, such as propylene - plastic are ordinary consumer products subject to the free enterprise system; including, negotiating payment method with landowners when seeking to have daily, monthly and yearly used of their land (Court transcript, *Defendant's Exhibit 9*, Vol. 2, pp 243) (Appellant's Original Brief, Assignment of Error 1, pp 17) (Writ to the Supreme Court, LA, Assignment of Error 2, pp. 19)

The main criteria for pipeline construction as testified by Enterprise, Mr. Michael Johnson, was to obtain *higher prices for products in Texas*. Given the fact, Enterprise new construction was not given a Public Convenience and Necessity Certificate by the state and federal government, during trial court proceedings this threshold issue addressing public necessity was not addressed by Enterprise.(Appellant's Original Brief, Assignment of Error 1, pp 14) When asked by landowner, Mr. Ebow, reason for pipeline construction, "Were the there a *criteria* like public necessity, expediting, decreasing fleet on highways and getting it to Mont Belview anymore like you say, faster, safer, whatever method?" (Court transcript, Vol. 2, pp. 395-396). Mr. Michael Johnson court testimony answered,

> Well, we look at the market potential that we see developing for the products, and we believe that the marketplace itself will demand products based on prices in the Mont Belview area.....So, as a result of that, we think there will be an opportunity where people will be able *to obtain a higher price for their products in Mont Belview than they can in Louisiana,* and will desire to have those products transported from Louisiana Section 28 to Mont Belview. And we believe that there will be a large enough demand for that, that will support the construction and operating of the pipeline. (Court transcript, Vol. 2, pp. 395-396)

Enterprise interstate facility did not have interstate nor intrastate eminent domain attachments on Section 32. Petitioner requested trial court to protect her civil rights, Property Rights of Citizens,

> Your Honor, I'm also asking for permission under *U.S. Code Title 42 Section 1982*, I'm asking for protection under the property rights of citizens. This is a civil rights act and it protects your eminent domain.....All citizen of the United States, shall have the same right in every state and territory, as is enjoyed by white citizens....thereof to inherit, purchase, lease, sell, hold convey real and personal property.....(Court Transcript, Vol. 2, pp. 455, 536) (Appellant's Original Brief, Assignment of Error 2, pp. 17, 29) (Oral Argument)

Writ to the Supreme Court of Louisiana, pp. 5, again reminded court this was a civil rights violation,

> Trial court judgment and appellate court affirmation has erroneously interpret Enterprise ..... interstate tariff listing gives eminent/domain expropriation attachment on Section 32. This mis-interpretation of federal pipeline laws have resulted in a violation of US Code, Title 42 Section 1982, Property Rights of Citizens which states.....

REASON FOR GRANTING WRIT

Enterprise interstate pipeline facility falls under federal jurisdiction and federal laws enacted by the Congress of the United States as given to it by Article 1 § 8 of the United States Constitution and pre-empts state laws enacted by the legislative body of *one state, Louisiana*. The Congress of the United States has enacted *no laws* giving eminent domain nor expropriation attachment to an *interstate, petroleum facility*. The federal commission given the power to regulate this facility is the Federal Energy Regulatory Commission, FERC, and not the Louisiana Public Service Commission, LPSC. Supreme Court decision, *Gibbons v. Ogden*, 9 Wheat. 1, 196-197 (1824) affirmed federal jurisdiction over interstate commerce is vest in Congress,

> We are now arrived at the inquiry What is this power? It is the power to regulate this is, to prescribe the rule by which commerce to to be governed. This power, like all others vested in Congress, is complete in itself…the sovereignty of Congress….. is plenary as to those objects the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States.

Petitioner initially contacted the correct government agency, FERC, in charge of interstate commerce to *verify eminent domain attachment* and have consistently brought this to the attention of Louisiana courts per *Defendant's Exhibit 14, FERC*, stating Enterprise interstate, petroleum is under federal jurisdiction and have no federal eminent domain attachment. The United States Congress enacting the *Interstate Commerce Act of 1887* was very clear in setting up a commission to regulate interstate commerce, currently know as FERC. In *English v. General Electric Co.* 496 U.S. 79 (1990), this Court in a unanimous decision wrote,

> Our cases have established that state law is

> pre-empted under the Supremacy Clause, U.S. Const., Art. VI cl. 2.....Congress can define explicitly the extent to which its enactments pre-empt state law.....and when Congress had made its intent known through explicit statutory language, the courts task is an easy one.

The legislative government of one state, Louisiana, enacting state statutes giving *all intrastate*, common carrier pipelines expropriation rights within its border cannot be used by its judicial system to *Conflict* with federal laws not giving interstate, petroleum facilities eminent domain nor expropriation attachment.

Supreme Court decision, English v. General Electric Co, 496, U.S. 79 (1990) stated state laws cannot be used to pre-empt federal laws,

> ....in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. Such an intent may be inferred from a "scheme of federal regulation.....so pervasive as to make reasonable the inference that Congress left no room for the State to supplement it, "or where an Act of Congress touch [es]a field .....this court .....has emphasized: Where.....the field which Congress is said to have pre-empted" includes area that have been traditionally occupied by the State, "congressional intent to supersede state laws must be "clear and manifest."

Trial court judgment awarded right of way by stating Enterprise "is a common carrier pipeline and has authority to expropriate the rights sought from the tract of land involved in this suit pursuant to federal and state laws....." See reproduction in *Appendix, pp. 17-18. Trial court* failed to address the threshold issue by citing a single *federal* law, statute or code giving Enterprise *interstate* facility expropriation rights. Enterprise's Petition for Expropriation using state statutes is in *Conflict* with federal laws and is legally incorrect

and has no legal merit. *Trial court judgment failed to cite one federal law because there are none!.*

Trial court cannot reference federal laws are applicable with no direct reference to one federal law in awarding right of way when state and federal laws are in *Conflict.* Louisiana state statutes giving *intrastate, common carrier facilities* expropriation rights is pre-empted by federal statutes not giving them eminent domain nor expropriation attachment. *English v. General Electric Co, 496* U.S. 79 (1990) further states, "Finally, state law is pre-empted to the extent that it actually *conflicts* with federal laws. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements." Compliance would mean federal laws will agree with Louisiana state laws giving interstate, petroleum, common carrier facilities eminent domain - expropriations attachments and federal laws do not.

Third Circuit Court of Appeal is erroneous in affirming trial court decision when stating because Enterprise will file interstate tariff with FERC proves said facility has common carrier status and the right to expropriate on Section 32. Enterprise interstate, petroleum facility has no federal eminent domain attachment to expropriate on Section 32 whether it is a common carrier facility subject to the Interstate Commerce Commission or a non-common carrier expanding an internal transportation route. *The Interstate Commerce Act of 1887* was enacted to regulate monies charge, call tariffs, for transporting " passengers or property" by a third party carrier, referred to as a common carrier. *The Interstate Commerce Act, The Hepburn Act of 1906* and subsequent Congressional proceedings relating to interstate, petroleum facilities enacted no laws giving them eminent domain nor expropriation attachments and with *no further explanation,* said facilities have no legal right to expropriate private property. *The Burden of Proof* was on Enterprise to prove its Petition of Expropriation had legal validity and not Petitioner and landowners on Section 32. Petitioner's federal and state exhibits proved Enterprise did not meet its Burden of Proof and filed *a frivolous lawsuit.*

Third Circuit Court of Appeal is again erroneous in its opinion by citing one and all Louisiana court judgments and opinions in affirming trial court judgment. Relating to Louisiana, 4th Circuit

Court of Appeal decision, in particular, Collins Pipeline Co. v. New Orleans East., Inc., Petitioner's Writ to Supreme Court, Louisiana, pp. 6, stated "Collins has been erroneously used to legislate interstate pipeline eminent domain rights. This right is a legislative function of the federal government and its powers are not given, taken away or changed by a state court." Petitioner's Writ to the Supreme Court, Louisiana, Assignment of Error 7, pp. 24, stated, "The paramount error was to infer Collins Pipeline Co. can be used to expropriate using LPSC, Title 45, when it is not the agency to which tariff will be listed and cannot set rules and regulations governing Enterprise interstate tariff listing with the federal government, FERC.

In *Schneidewind v. ANR Pipeline Co.* 485 U.S. 293, 304 (1988) this Court stated FERC has various tools at it disposal to prevent improper profiting by companies,

> .....that gives FERC a number of *tools* – such as it authority to fix rates and to withhold certificates of public convenience and necessity - for examining the controlling the issuance of such securities in the exercise of its *comprehensive authority* ....FERC has various powers and obligations that both allow and require it to protect against the deleterious effects of ill-considered.....issuances in this area. For example, officers and directors of natural gas companies companies are prohibited from profiting from the company's securities issues.

Enterprise claim to be a common carrier and will list tariff with FERC for an interstate facility falls under the federal jurisdiction of the Interstate Commerce Commission and empowered by laws enacted by the *United States Congress* and not a state appellate court decision, Collins Pipeline Co. v New Orleans East. FERC using its power gives natural gas pipeline facilities certificate of public convenience and necessity and in not extending this special privilege to interstate, petroleum facilities is basically saying their products are ordinary consumer products; otherwise this special privilege would have also been extended to these facilities.

Federal interstate commerce laws and statutes have to be applied *equally* to landowners in all states. Petitioner owning property in

the state of Louisiana, should not be treated *differently* from landowners in other states having the freedom to refuse to sign an interstate, petroleum, Right of Way and Servitude Agreement without the duress of a lawsuit. Enterprise interstate, petroleum facility had no right to expropriate private property if said facility started in Louisiana, Oklahoma, New Mexico or any other state and ended in Mont, Belview, Texas.

The Third Circuit Court of Appeal being very knowledgeable regarding La. 45.251 used in Petition for Expropriations cannot excuse itself in not knowing Title 45 only has jurisdiction to give expropriation rights to intrastate pipelines. Louisiana statutes R.S. 45.252, R.S. 253 and R.S. 30.691 do not claim to have jurisdiction over an interstate petroleum pipeline facility. Third Circuit Court *chose to ignore* Petitioner's Exhibit 4 from it own agency, The Louisiana Public Service Commission, LPSC, showing Enterprise is not a common carrier on this well-established route since the sixties. Petitioner argued in Oral Argument with the Third Circuit, "Given the fact that Louisiana Title 45 and the federal government, FERC, does not give expropriation right to a liquid interstate pipeline carrier, I contend this case should have never proceed to trial court."

Enterprise own employee and *attorney*, Mr. Michael Johnson testified this facility is under the Interstate Commerce Commission, In *clear and simple terminology*, Enterprise interstate, petroleum, pipeline facility whether transporting third party products as a common carrier and subject to tariff rules and regulations of the Interstate Commerce Commission or *Wantonly* sought to expropriate private property to transport its own products and expand a well-established non-common carrier right of way to an interstate route, filed a Frivolous Lawsuit.

Enterprise, being a pipeline company and having access to a team of lawyers, including its own employees, is *cognizant* there are no federal laws, statutes, or codes giving its interstate, petroleum facility eminent domain attachment and the right to expropriate private property on Section 32. Petitioner argued in Oral Argument to the Third Circuit Court of Appeal,

> You don't defraud landowners telling them it an interstate pipeline and when they verify this information with the federal agency, FERC, learn

an interstate, liquid pipeline route has no expropriations attachment, making Petition for Expropriation use of Title 45 Legally Incorrect. If landowners are not aggressive enough to check on interstate and intrastate laws governing pipeline construction this could be an effective Threat in getting right of way signatures.

Enterprise *frivolous lawsuit* and Louisiana courts *erroneous judgment* and opinion affirming Petition for Expropriation gives preference to its vast pipeline system and a large company, Enterprise, to the *detriment of small landowners*. Each new pipeline construction on Section 32 exposes Petitioner's ownership in Section 32 to a greater chance for environmental mishaps with no accountability. In case of such an even, Petitioner and other landowners on Section would face the duress of costly legal expenses to recover expensive oil and gas damages. Enterprise's offensive Right of Way and Servitude Agreement sought to compound Petitioner's duress by asking to be release of any liability once one time servitude payment is accepted. Section 32 is at greater risk from environmental mishaps with a multitude of pipeline construction per *La .R.S. 30.245(A)* which states, "Louisiana is subject to greater exposure to a major oil spill disaster than any other state. This is a result of large volumes of stored oil.....and miles of pipeline."

Given the heighten State of Alert of this country after September 11, 2001, pipeline facilities can be visible and vulnerable targets. Expropriation of private property without due process of law is *wanton and reckless*. Petitioner ***answers*** Enterprise interstate, petroleum, liquid pipeline facility is under federal jurisdiction with *No* eminent domain attachment to expropriate private property on Section 32 and is pre-empt by state jurisdiction giving it expropriations rights. Petitioner **answers** she had the right not to sign Enterprise's Right of Way and Servitude Agreement, one definitely not in her "best interest" and should not have been subject to the *duress of Enterprise's frivolous lawsuit*.

Louisiana judicial system has erroneously protected the interest of Enterprise whose main criteria for pipeline construction was to get *higher prices for its products in Texas*. The small, one-time

compensation to avoid lawsuit can be equated to giving Enterprise free access to Petitioner's ownership in Section 32 in perpetuity; a right she would never voluntary agree to in the absence to federal laws giving eminent domain attachment to expropriate said facility. Petitioner's right to free contract negotiation has been *legally violated.* Section 32 is a tract of land *overburden* with a multitude of hazardous oil and gas activities paying no rental compensation to Petitioner. This is a section of land where rental compensation should be paid to landowners by their request in order to obtain a right of way or landowners have a *"free right"*, without the duress of a lawsuit, to refuse to sign any agreement. Present right of way lawsuit is comparable to *setting* up a system of continual *"taking"* by Enterprise or any other pipeline company on Section 32 in the future.

Petitioner receives various rental compensation from other tracts of land near and surrounding Section 32 for which she is in joint-ownership; such, as farming, craw-fishing, oil and gas royalty and oil and gas mineral leases. Enterprise, on the other hand, sought to take perpetual use of Petitioner's percentage ownership in Section 32 with a one time servitude payment and avoid rental compensation with the insult of increasing hazardous activities on Section 32. Petitioner contends Louisiana judicial system did not provide her with due process of law. Petitioner's 5th and 14th Amendment rights, including, her civil rights Title 42 §s 1981 and 1982 were violated. Petitioner **answers** "yes" the Louisiana 16th Judicial Court Judgment should be reversed.

In *Carey v. Piphus*, 435 U.S. 259 (1978) due process of law is meant to protect from ".....unjustified deprivation of life, liberty, or property" In *Mathews v. Eldridge*, 424 U.S. 344 (1976) this Court emphasized, "procedural due process rules are shaped by the risk of error inherent in the truth-finding process....." Petitioner's right to free contract negotiation in Title 42 is "By its plain terms, the relevant provision in § 1981 protects.....[the same right.....to make .....contracts.]" *Patterson v. McLean Credit Union*, 491 U.S. 176 (1989)

Petitioner request compensatory and punitive damages for violating her civil rights per U.S.C. Title 42, §s 1981 & 1982 and provides a redress per U.S.C. Title 42 § 1983.(Appellant's Original

Brief, pp.30-31) (Writ to the Supreme Court, LA, pp. 25) This is a *frivolous lawsuit* also violating Petitioner's 5th and 14th constitutional rights for which due redress should also address and include. This is a multi-violation of Petitioner's rights and should be awarded irregardless if she was Defendant in trial court proceedings. Opinion in *Kay v. Ehrler*, 499 U.S. 436 (1991) states,

> In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to *assert their civil rights*.....then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.

In *Carey v. Piphus*, 435 U.S. 254 (1978) this Court contended, ".....the basic purpose of § a 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights.....Rights, constitutional and otherwise, *do not exist in a vacuum*. Their purpose is to protect persons from injuries to particular interests, and their contours are shaped by the interests they protect." In *Kolstad v. American Dental Ass*. 527 U.S. 548 1999), This court held that "The 1991 Act's punitive damages standard, as the Court recognizes..... held that punitive damages may be award under 42 U.S.C. § 1983[....when it involves reckless or callous indifference to the federally protected rights of others]." Punitive damages are "a particular remedial mechanism normally available in the federal courts." *Bivens 403*, U.S. 397 (1971).

Petitioner contends Enterprise is *cognizant* of state and federal commerce laws and should have never filed a *frivolous lawsuit* on Section 32 for an interstate, petroleum pipeline facility with no eminent domain and no expropriation attachment. (Court transcript, Vol. 2 pp. 544) (Appellant's Original Brief, pp. 28-29) (Appellant's Reply Brief, pp. 12) (Writ to the Supreme Court, LA, Assignment of Error 7, pp. 24. Louisiana courts are *cognizant* of state and federal statutes and should have ruled against Petition for Expropriation at trial court level. The continual pursuit for justice by Petitioner is one that should have never proceeded to the Supreme Court of the United States if justice was served at the state court level in Louisiana.

The high cost of legal expenses gave a large pipeline company, like Enterprise, an unequal advantage to use the legal system to force unsigned landowners to sign Right of Way Agreement; otherwise face the duress of a lawsuit. Legal representation cost to any of the small landowners would far exceed monies received. (Court transcript, Vol.2 pp. 509-510) (Appellant's Original Brief, pp. 2)

Petitioner took the initiative to investigate this issue and presented trial court with state and federal exhibits proving Enterprise had no expropriation rights on Section 32 for an interstate nor an intrastate pipeline facility. Petitioner's government exhibits were *ignored* by Louisiana courts. Enterprise *insensitivity* to landowners sought to expand a right of way on a tract of land to *105 feet* and *seven (7)* pipeline facilities and subsequently filed a lawsuit when some landowners failed to sign its previously *requested and not expropriated* Right of Way Agreement.

Enterprise has an *insatiable* appetite for right of way area on Section 32. If trial court judgment is not reversed, Enterprise will have no legal obstacles in filing *future* frivolous, expropriation lawsuits on Section 32 and could eventually take over the entire tract of land. The *multitude of hardships* attached to Section 32 by Enterprise is a visible and real; current and future. Enterprise current right of way adds to depreciate Section 32's market value and is compounded by a multitude of past right of ways and hazardous oil and gas activities paying no rental compensation exposing Section 32 to a greater chance for environmental mishaps. The multitude of unattractive *hardships* by Enterprise serves as a detriment in increasing its market value and serves in the opposite to *exponentially decrease* it value with each pipeline construction. In *Penna Coal v. Mahon, 260*, US. 415 (1922) the natural Greed of Man is address,

> The protection of private property in the Fifth Amendment *presupposes that it is wanted for public use*.....When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last *private property disappears*.

> But that cannot be accomplished in this way under the Constitution of the United States. The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as *taking.*

This would be *a travesty* to all landowners in America when one state court judgment and opinion affirming a *frivolous lawsuit* is not revered and gives a private, profit-seeking, pipeline company the right to legally use the judicial system as a tool to *"take"* private property for its own enrichment. Petitioner summarized at trial court, "A private company cannot be permitted to use the law as a *frivolous tool* to increase corporate profit and expansion.....We should not be in this courtroom today....." (Court transcript. Vol. 2. pp. 539-540)

An *interstate natural gas* pipeline facility with eminent domain attachment and a Certificate of Public Convenience and Necessity has a strict process in place to address and help protect landowners' constitution and civil rights. Enterprise *interstate, petroleum* pipeline facility, on the other hand, with *no* federal law from the Interstate Commerce Clause giving it eminent domain attachment and FERC not giving it a Certificate of Public Convenience and Necessity sought to expropriate private land and escape all strict rules and regulations adhered to by natural gas pipeline facilities. It is clear that neither the Interstate Commerce Clause nor FERC "tools" of regulations gave Enterprise's facility eminent domain attachment and the right to expropriate private property on Section 32 and escape accountability to landowners.

CONCLUSION

Petitioner respectfully request that a writ of certiorari be granted. The *simplicity* of this case is Enterprise interstate, petroleum pipeline facility is under federal jurisdiction and there are no laws or regulations giving it eminent domain attachment and the right to expropriate private property on Section 32. This is a case of "taking"

by a private profit-seeking company for its personal enrichment by confusing the application of state and federal jurisdictional laws as applicable to said facility. Louisiana laws are in conflict with federal laws not giving eminent domain attachment nor expropriation rights to said facility; federal jurisdiction pre-empts state jurisdiction. This case has been erroneously reviewed by Louisiana courts.

Petitioner request trial court decision be reversed and the removal of all pipelines installed by Enterprise relating to its Petition for Expropriation. Enterprise proceeded with pipeline construction after trial court judgment awarded it right of way. This is a frivolous lawsuit and Petitioner ask this honorable Court for compensatory and punitive damages. Section 32 is a special tract of land overburden with a multitude of pipeline facilities and is in desperate need legal protection from Enterprise and all pipeline companies.

RESPECTFULLY SUBMITTED,

Belva Mary Lee Francois
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APPENDIX

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APP. 1

The Supreme Court of the State of Louisiana

ENTERPRISE LOU-TEX NGL PIPELINE L.P.

VS. NO. 2001-C-3178

BRADFORD PAUL LEE, ET AL.

IN RE: Francois, Belva Mary Lee; - Defendant; Applying for Writ of Certiorari and/or Review, Parish of St. Martin, 16th Judicial District Court Div. B, Nos. 62456; to the Court of Appeal, Third Circuit, No. 01-575

February 8, 2002

Denied.

JTK
PFC
CDK
BJJ
JPV
CDT
JLW

Supreme Court of Louisiana
February 8, 2002

s/ Rai T. Daigle
Deputy Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT
01-575

Judgment rendered **October 31, 2001**
Application for rehearing may be filed
within the delays allowed by La. Code Civ. P.
art. 2166 or La. Code Crim. P. art. 922.

ENTERPRISE LOU-TGEX NGL PIPELINE L.P.

VERSUS

BRADFORD PAUL LEE, ET AL.

****

APPEAL FROM THE
SIXTEENTH JUDICIAL DISTRICT COURT,
PARISH OF ST. MARTIN, NO. 00-62456,
HONORABLE PAUL J. deMAHY, DISTRICT JUDGE

****

MICHAEL G. SULLIVAN
JUDGE

****

Court composed of Ulysses Gene Thibodeaux, Jimmie C. Peters, and Michael G. Sullivan, Judges.

s/ MGS
s/ UGT
s/ JCP

AFFIRMED.

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DEFENDANT/APPELLANT

SULLIVAN, Judge.

In this expropriation proceeding, Belva Mary Lee Francois (Ms. Francois), appeals a judgment in favor of Enterprise Lou Tex NGL Pipeline, L.P. (Enterprise).
For the following reasons, we affirm.

Procedural History

Enterprise filed this expropriation suit, seeking a permanent 30' pipeline servitude, plus a temporary construction and maintenance servitude, over a 161-acre tract of land in St. Martin Parish, Louisiana. The purpose of the pipeline will be to transport natural gas liquids (NGLs) bidirectionally between Enterprise's storage facility in Breaux Bridge, Louisiana and the fractionation market in the Mont Belvieu, Texas, area.

Enterprise's research revealed that over 116 individuals or entities had ownership interests in the subject tract. After obtaining conventional servitude from a majority of these landowners, Enterprise filed this suit against twenty-three individuals with whom it could not reach an agreement. Enterprise settled with eleven Defendants before trial. Of the remaining twelve Defendants, five were absentees who were represented by appointed counsel at trial, and three, including Ms. Francois, appeared for trial representing themselves. After hearing the evidence, the trial court granted the expropriation and compensated the remaining twelve Defendants in accord with Enterprise's appraisal expert. The trial court also assessed one-twelfth of the court costs to Ms. Francois after finding that prior to trial Enterprise offered her an amount exceeding the true value of the servitude.

Only Ms. Francois, who was awarded $121.03 for her approximate .06% undivided interest, has appealed. In eight assignments of error, she argues that the trial court erred (1) in finding that Enterprise proved a public necessity for the taking; (2) in allowing an excessive taking of land; (3) in finding that Enterprise was an entity with the power of eminent domain under Louisiana law; (4) in permitting the testimony of an unqualified expert; (5) in not protecting the rights of the landowners; (6) in allowing an unequal distribution of compensation; (7) in excluding certain exhibits; and (8) in failing to dismiss the expropriation as a "frivolous lawsuit."

OPINION

Right of Expropriation

In her third assignment of error, Ms. Francois contests Enterprise's right to expropriate. Because this is the threshold issue in this case, we will address it first.

La.R.S. 19:2(8) authorizes "[a]ll persons included in the definition of common carrier pipelines as set forth in La.R.S. 45:251 "to expropriate needed property when "a price cannot be agreed upon with the owners." La.R.S. 45:351 provides in part:

> (1)"Common carrier" includes all person engaged in the transportation of petroleum as public utilities and common carriers for hire; or which on proper showing may be legally held a common carrier from the nature of the business conducted, or from the manner in which such business is carried on.
>
> (2) "Petroleum" means crude petroleum, crude petroleum products, distillate, condensate, liquefied petroleum gas, any hydrocarbon in a liquid state, any product in a liquid state which is derived in whole or in part from any hydrocarbon, and any mixture or mixtures thereof; provided, however, that such term shall not include methanol synthetically produced from coal, lignite, or petroleum coke.

La.R.S. 45:254 provides in part:

All persons included in the definition of common carrier pipe lines as set forth in R.S. 45:251 have the right of expropriation *with authority to expropriate private property under the state expropriation laws for use in its common carrier pipe line business*, and have the right to lay, maintain and operate pipe lines, together with telegraph and telephone lines necessary and incident to the operation of these pipe lines, over private property thus expropriated,....

(Emphasis added.)

It is undisputed that because Enterprise's proposed pipeline will carry NGLs, or natural gas liquids derived from hydrocarbons, Enterprise is "engaged in the transportation of petroleum" as

required by 45:251(1). However, Ms. Francois argues that the above statutes do not give Enterprise the right of expropriation because the proposed pipeline will be an interstate facility, which is not regulated by the Louisiana Public Service Commission (LPSC). She also contends that Enterprise is not a "common carrier" because there is not proof that the pipeline will be used to transport the products of third parties. We disagree with both arguments, finding that the first is not supported by law and that the second is not based upon fact.

In *Collins Pipeline Co. v New Orleans East, Inc.* 250 So.2d29(La.App.4 Cir.1977), the plaintiff sought to expropriate land for the construction of a petroleum pipeline that began in Meraux, Louisiana and ended near Collins, Mississippi. At that time, La.R.S. 19:2 did not list common carrier pipelines as entities authorized to expropriate private property. Nonetheless, La .R.S. 45:254 provided then, as it does now, that common carrier pipelines are given the authority to expropriate private property under state expropriation laws. Even though that pipeline began in Louisiana and ended in Mississippi, placing it under federal regulatory authority, the court upheld the expropriation under La.R.S. 45:254, stating:

> Because Collins' pipeline begins in Louisiana and terminates in Mississippi it is regulated by the Interstate Commerce Commission (now the Federal Energy Regulatory Commission (FERC) rather than by the Louisiana Public Service Commission. *However, this does not preclude Collins from expropriating under the authority of R.S. 45:251,254 because 45:251 includes "all persons engaged in the transportation of petroleum:" and does not restrict "person" to intrastate carriers.* See Dixie Pipeline Company v. Barry, La.App., 227 So.2d 1 (3rd Cir. 1969);writs refused 255 La. 145, 229 So.2d 731 (1970)

Id at 33 (emphasis added).

See also *Dixie Pipeline Co.*, 227 So.2d at 6, where this court held that the plaintiff "must be classified as a common carrier, as that term is defined in LSA-R.S. 45:251 (1) and as it is used in LSA-R.S. 45:254, even though it is subject to the general jurisdiction of the

Interstate Commerce Commission [now the FERC] rather than the Louisiana Public Service exhibits Commission:" Thus, Ms. Francois' contention that Title 45 of the Louisiana Revised Statutes only gives intrastate common carrier pipelines the power of expropriation has long been rejected by Louisiana courts.

Ms. Francois also argues that because the proposed pipeline will begin at an Enterprise storage facility there will be "no pick-up of third party product." Therefore, Enterprise is not a "common carrier" because it is not transporting petroleum products "for hire." We find no basis in the record for this conclusion.

Paul Lair, land manager for Enterprise Products Company, testified that Enterprise's business is to construct, maintain and operate the proposed pipeline for the transport of NGLs for hire. He explained that, as Enterprise is not an exploration and production company, it will not own or produce any of the NGLs to be shipped on that line. The only revenue that Enterprise generates is the tariff fee charged to transport for third parties. Based upon this evidence, we cannot conclude, as Ms. Francois suggests, that Enterprise owns the products in its storage facility and that the proposed pipeline is for "internal business operation only." Additionally, one of Ms. Francois' exhibits, a letter from a FERC employee, supports a finding that Enterprise is a common carrier. In that letter, Robert Cupina, Director of the FERC's Division of Tariffs and Rates, concluded that, from his investigation, Enterprise is in the process of preparing its tariff filing for a petroleum products pipeline.

Ms. Francois additionally argues that Enterprise should not be considered a common carrier because she was unable to find any information about the proposed pipeline on file with the various regulatory bodies. However, Ms. Francois' own exhibits reveal that such filings are not required at this time. For example, Mr. Cupina clearly explained in this letter that the FERC has no jurisdiction over the construction and operation of oil or oil products facilities. He explained that the FERC does regulate such pipelines as to rates and tariffs, but that the tariff filing is due "when service commences." This letter corroborates the testimony of Michael Johnson, Enterprise's general counsel, that Enterprise's tariff will be filed with the FERC before Enterprise begins actual shipment of products through the line. Mr. Johnson also explained that, because the

proposed pipeline will ship petroleum products as opposed to natural gas, a FERC certificate of public convenience and necessity is not required before its construction. Additionally, we note that in *Southern Natural Gas Co. v Poland,* 384 So.2d 528 (La.App.2 Cir.), *writ denied*, 386 So.2d 363 (La.1980), the court held that the failure to produce the required FERC certificate for a natural gas pipeline was not fatal to a state law expropriations suit.

Ms. Francois may have been confused by the statement in Mr. Cupina's letter that "no federal right of eminent domain attached to [oil or products]) facilities." However, as we have explained, Enterprise's expropriation rights arise from state law.

Public and Necessary Purpose

In her first assignment of error, Ms. Francois argues that Enterprise failed to prove a public and necessary purpose for the expropriation.

Article 1, § 4 of the Louisiana Constitution provides in part: "Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose in public and necessary shall be a judicial question."

In *Town of Vidalia v. Unopened Succession of Ruffin,* 95-580, p. 7 (La.App.3 Cir. 10/4/95);663 So.2d 315, 319, this court stated that "any allocation to a use resulting in advantages to the public at large will suffice to constitute a public purpose." In *Louisiana Resources Co. v. Greene*, 406, So.2d 1360 (La.App. 3 Cir. 1981), *writ denied*, 412 So.2d 84 (La. 1982), we recognized that a pipeline may serve a public purpose by placing more natural resources into the stream of commerce, rather than by supplying them directly to the consuming public. *In Louisiana Resources Co.,* we cited with approval those cases that permitted expropriation for pipelines that only connected with privately owned plants, starting that "the public would be served indirectly by gaining access to the products of the private enterprises." *Id.* at 1364.

At trial, Mr. Lair explained that the proposed pipeline would operate bidirectionally, with termination and supply points in

Louisiana and in Texas. The new line, would not be dedicated to only one product, would transport NGLs to Mont Belivew, Texas, which was described as one of the largest fractionation markets in the country. Mr. Johnson testified that the new line was proposed in anticipation of substantial supplies of NGLs from increased exploration and production activities in the Gulf of Mexico. After transportation to Mont Belvieu, these NGLs would then be fractionated into products such as propane, butane, and natural gasoline. Mr. Johnson predicted that this additional supply of NGLs would exceed consumption in Louisiana, and Mr. Lair testified that the new line was expected to run at full capacity.

Ms. Francois first argues that Enterprise failed to meet its burden of showing a public necessity for the project because it failed to call "outside" experts. We disagree. Enterprise's evidence is similar to that in *Collins Pipeline Co.*, 250 So.2d 29, where the court relied mainly on the testimony of the plaintiff's president that the proposed pipelines was needed because a rapid growth in the refining industry resulted in a shortage of pipeline capacity in the Gulf Coast area and that a pipeline as the most efficient way of transporting petroleum products.

Ms. Francois also complains that Enterprise, a Texas company, is allowed to expropriate Louisiana lands. This argument is similar to that rejected in *Louisiana Resources Co.*, 406 So. 2d 1360, where defendants complained that a proposed pipeline would only serve industries located over 100 miles away. In finding that this fact was not a valid consideration, the court stated, "It is obvious that the term 'public' in the test for expropriation under the Louisiana Constitution is not limited to persons or interests found in the political subdivision in which the land to be expropriated lies." *Id.* at 1364. We find no reason to conclude that the purpose of Enterprise's pipeline will be any less "public" because it will serve interests in Texas as well as in Louisiana.

Ms. Francois also argues that Enterprise failed to prove that this pipeline is necessary because an alternate route exists over lands of others and because Enterprise already employs an alternate method of transportation, the trucking of NGLs.

In *Calcasieu - Cameron Hospital Service District v. Fontenot,* 628 So. 2d 75-78-79 (La.A.pp.3 Cir. 1993), *writ denied* 94-168 (La. 3/18/94); 634 So.2d 854 (citations omitted), this court explained:

> *[T]he extent and location of the property to be expropriated are within the sound discretion of the body possessing the power of eminent domain, and these determinations will not be interfered with by the courts if made in good faith....* The standard is whether the expropriator, in selecting the location and extent of the property to be expropriated, acted in bad faith or so capriciously or arbitrarily that its action was without an adequate determining principle or was unreasoned. *Criteria to be considered by the expropriator include the availability of an alternate route, costs, environmental factors, long-range area planning, and safety consideration....*However the mere availability of a feasible alternative location is not, by itself, an indication that the expropriator has acted arbitrarily or capriciously in making its selection.
>
> Thus, the expropriating authority must show the public and necessary purpose for the expropriation and that, prior to filing the petition for expropriation, it offered to compensation the owner with an amount equal to at least the lowest appraisal or evaluation.
>
> The burden is on the defendant owner to establish that the decision of the public body to expropriate the property is unreasonable and in bad faith.

(Emphasis added.)

Both Mr. Johnson and Mr. Lair acknowledged that Enterprise does transport NGLs by truck, but they also explained that a pipeline is much more efficient. As an example, Mr. Johnson testified that a pipeline system can deliver over 250,000 barrels a day, whereas it would take over 1,200 trucks to carry that same volume. Concerning the route of this particular pipeline, Mr. Lair explained that the

proposed route was an established one that was chosen for its minimal impact on the environment and on residential areas. Bernie Watson, the right-of-way manger for this project, testified that he investigated another tract, but concluded that using it would involve more complicated title problems than the present case.

Upon review of the record, we find no error in the trial court's conclusion that Enterprise proved a public and necessary purpose for the expropriation. Enterprise's evidence established that it acted in accord with relevant criteria, such as the public benefit from access to these products, the selection of an established route with little environmental or residential impact, and the obstacles to alternative routes or transportation.

Excessive Lands

In her second assignment of error, Ms. Francois argues that the trial court authorized the taking of "excessive lands." She contends that a servitude with a width of 30' is a violation of La.R.S. 30:723, which limits such expropriations to 15', and that awarding a servitude of this pipeline, when several others are already on the property, is a violation of La.R.S. 30:724, which prohibits the location of additional pipelines without written consent of the landowner. We disagree, The statutes cited by Ms. Francois apply to coal or lignite slurry pipelines and not to those that transport NGLs. Furthermore, Joseph Benoit, a landman with twenty years of experience, testified that a 30' servitude is the standard in the industry. The trial court did not err in awarding a 30' permanent servitude as well as a temporary construction and maintenance servitude.

Evidentiary Rulings

In her fourth assignment of error, Ms. Francois argues that the trial court erred in accepting Mr. Johnson, Enterprise's general counsel, as an expert in pipeline regulation because he is not licensed to practice law in Louisiana. She also argues that Mr. Johnson should not have been allowed to testify that, in his experience, a single payment for a pipeline servitude, as opposed to annual rental,

is industry custom. In her seventh assignment of error, she argues that the trial court erred in refusing to admit certain documents.

When the trial court accepted the testimony of Mr. Johnson, it stated that it would take into consideration that he was not licensed in this state. Mr. Johnson testified that, in his twenty years as Enterprise's general counsel, he has advised the company about the construction of pipelines in Louisiana and about applicable federal regulations. In the present case, his testimony was generally limited to Enterprise's compliance with federal regulations and to factual matters concerning the transportation and fractionation of NGLs. We find no error the trial court's acceptance of Mr. Johnson as an expert in the field of pipeline regulation.

Concerning Mr. Johnson's testimony about a single payment being the standard method in the industry, we note that Ms. Francois neither objected to this question nor attempted to impeach Mr. Johnson while he was on the stand. Later, after all witnesses testified, Mr. Francois sought to introduce a document that she now claims would have discredited that testimony. At that time, the trial court reviewed the document and excluded it because it pertained to another piece of property. We also note, as Enterprise argues in its brief, that Mr. Johnson's testimony is merely reflective of many cases in Louisiana jurisprudence that dealt with one-time payments for pipeline servitudes. Under these circumstances, we find no error in the either trial court's failure to limit Mr. Johnson's testimony or in its refusal to admit another document.

Mrs. Francois also argues that the trial court erred in excluding a letter from the Department of Transportation (DOT) stating that it had no record of the construction of a pipeline system in St. Martin Parish and a letter from the Department of Natural Resources (DNR) concerning salt water disposal wells located in Section 32 of St. Martin Parish. The trial court excluded the first letter in the absence of a foundation that Enterprise was required to file anything with the DOT and the second letter for lack of authentication.

We find no error in the exclusion of the letter from the DOT, having already discussed why any documentation with federal authorities appears premature at this state. Ms. Francois argues that the second letter casts doubt on Enterprise's claim to be a common carrier by showing that the proposed pipeline would originate from a

private storage facility. We likewise find no error in the exclusion of this letter, as Enterprise has never disputed that the pipeline will originate from a privately-owned storage facility.

Protection of Landowners' Rights

In her fifth assignment of error, Ms. Francois argues that the trial court failed to protect the rights of landowners in awarding Enterprise a permanent servitude. Some of her contentions, however, seem to address the contracts that Enterprise presented to landowners to obtain conventional servitudes rather than the judgment rendered in this case. Of course, those contracts were not before the trial court, and its judgment in no way affects them.

The judgment of the trial court awards Enterprise a permanent 30' wide servitude, plus a temporary construction and maintenance servitude consisting of an additional 30'feet along the pipeline route and a work area near Plant Road. It further provides that the rights of the parties shall be governed by "applicable provisions of law," to the extent not specifically contradicted therein. The judgment also provides that the servitudes have a total value of $2,118.00 based upon 100% ownership, of which Ms. Francois' share is $121.03.

The trial court based the compensation awarded upon the expert testimony of real estate appraiser Carr Dowell. Mr. Dowell testified that he valued the 161-acre tract at $209,300.00 based upon seven comparable sales of hardwood bottom lands, although he assigned this tract a slightly higher value per acre because of its better access to timber. None of the Defendants presented any testimony to contradict that of Mr. Dowell. Although Ms. Francois has not assigned as error the amount she was awarded, elsewhere in her brief she ask for reimbursement of trial and appellate costs and $40,000.00 for "TIME, travel and other miscellaneous expenses." As Mr. Dowell's testimony was uncontradicted, we find no error in the trial court's award of compensation.

The trial court also cast Ms. Francois with one-twelfth of the court costs, after finding that prior to trial Enterprise tendered an amount in excess of that awarded in the judgment. La.R.S. 19:12 provides "If a tender is made of the true value of the property to the owner thereof, before proceeding to

a forced expropriation, the costs of the expropriations proceedings shall be paid by the owner." It is undisputed that before trial Enterprise offered Ms. Francois $628.71. We, therefore, find that the award of court costs was proper and that Enterprises proved it negotiated in good faith before filing suit.

Ms. Francois argues that the judgment is a "bad contract" for the landowners because it does not protect their mineral rights and because it "has no time limit." However, the judgment of the trial court does not disturb the landowners' mineral rights, and an award of a permanent servitude is authorized by law. Her remaining concerns about release of liability for construction upon payment and environmental mishaps are not addressed in the judgment.

Unequal Distribution of Compensation

In her sixth assignment of error, Ms. Francois complains that Enterprise overcompensated another landowner, The Thermo Company (Termo), in a conventional servitude agreement by paying it an amount based upon 49% ownership rather than its true ownership of 40%.

The judgment from which Ms. Francois appeals does not address Termo's ownership percentage, and Ms. Francois does not argue that her ownership percentage is erroneously stated in the judgment. Given that the Termo contract was never before the trial court and that Ms. Francois was not a party to that agreement, we find nothing to review in this assignment of error.

Frivolous Suit

In her final assignment of error, Ms. Francois argues that the trial court erred in awarding a right-of-way in a frivolous lawsuit. As Enterprise has met each element of its burden of proof, this suit is clearly not frivolous.

Decree

For the above reasons, the judgment of the trial court is affirmed. Costs of the this appeal are assess to Defendant-Appellant, Mary Belva Lee Francois

This opinion is NOT DESIGNATED FOR PUBLICATION. Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.

APP. 16

318355

ALLEN BLANCHARD SR
CLERK OF COURT
ST. MARTIN PARISH, LA

CONVEYANCE

BOOK	PAGE
1326	183

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s/ Eugenie C Willis
Deputy Clerk

16TH JUDICIAL DISTRICT COURT
PARISH OF ST. MARTIN
STATE OF LOUISIANA

ENTERPRISE LOU-TEX NGL PIPELINE L.P	*	**NO: 62458**
	*	**DIVISION: B**
Versus	*	
	*	**JUDGE PAUL**
BRADFORD PAUL LEE; JOSEPH WINDED PRICE THROUGH CURATRIX MARIE MERLIN PRICE; MARIE MERLINE PRICE; MARTHELINE PRICE SAM; HATTIE PRICE ROBERTSON; MURPHY JOSEPH PRICE JR.; EMICK PRICE, SR.; MAYDELL PRICE LASSERE; MAYELL PRICE LEE; RENA M. PRICE; ALFRED SCALES, III; VERNA FRANCOIS ROBERTS; BELVA MARY LEE FRANCOIS; MARIE YOLANDA EBOW; MAE ATTRICE EBOW;	*	**DEHAHY**

ALBERT EBOW, JR.; ALLEN ANTHONY GEORGE; DOROTHY FRANCOIS GEORGE WAHSINGTON; LUCAS SAVOY; MARY ALICE SAM JACOB; VERNA SAM; FAY BORDELON; AND PAUL GEORGE, JR.

FILED _____ _____
DEPUTY CLERK

JUDGMENT

This matter came on for trial at the Courthouse in St. Martinville on August 14, 2000. Present representing the plaintiff, Enterprise Lou-Tex NGL Pipeline L.P., were Lawrence P. Simon and Cheryl M. Kornick; present representing the absentee defendants, Lucas Savoy; Mary Alice Sam Jacob; Verna Sam; Faye Bordelon; and Paul George, Jr., was Lewis Pittman. Also present, without legal representation, were Belva Mary Lee Francois; Alfred Scales, III; and Albert Ebow, Jr. Neither present personally nor through a legal representative were Marie Yolanda Ebow; Mae Attrice Ebow; Verna Francois Roberts; and Allen Anthony Geroge. (Previously dismissed were defendants Bradford Paul Lee; Joseph Winded Price, through curatrix, Marie Merlin Price; Martheline Price Sam; Hattie Price Robertson; Murphy Joseph Price Jr.; Emick Price, Sr.; Maydell Price Lassere; Mayell Price Lee; Rena M. Price; and Dorothy Francois George Washington.)

After hearing the testimony of the witnesses, considering the documentary evidence presented, and hearing the arguments presented, the Court being of the opinion that the facts and the law favor Enterprise Lou-Tex NGL Pipeline L.P. and that it is entitled to judgment herein; and

The Court finding that Enterprise Lou-Tex NGL Pipeline L.P. is a common carrier pipeline and has authority to expropriate the rights sought from the tract of land involved in this suit pursuant to federal

and state law and that Enterprise Lou-Tex NGL Pipeline L.P.'s pipeline serves a public and necessary purpose;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

A. Enterprise Lou-Tex NGL Pipeline L.P. is hereby awarded a thirty foot (30') wide permanent servitude as shown on Exhibit "A" which is attached hereto and incorporated herein for all purposes, for installing, constructing, operating, surveilling, maintaining, repairing, removing, and/or replacing a pipeline for the transportation and transmission of petroleum as defined by Louisiana law traversing the following property located in St. Martin Parish, Louisiana in which each defendant owns as undivided interest:

> That certain tract of land containing 161 acres, more or less, situated in Section 32, Township 9 South, Range 7 East, St. Martin Parish, Louisiana, more particularly described as the Southeast Quarter (SE/4) in that Sale, dated March 13, 1911, recorded in Conveyance Book 72, Page 408, under Entry No. 35651, in the records of the office of the Clerk of Court for St. Martin Parish, Louisiana.

Defendants are reserved the right to make use of the servitude area for purposes and in a manner that will not interfere with plaintiff's exercise of its rights under the servitude, but defendants shall not create, construct, or allow any houses, buildings, engineering works, lakes, ponds, trees, bushes, structures, or any other obstructions on or over the servitude area. To the extent not specifically stated to the contrary herein, the rights and obligations of the plaintiff and the defendants as regards this servitude shall be controlled by law.

B. The servitude awarded to plaintiff in paragraph A above is awarded in perpetuity, subject to the provisions of Louisiana law regarding abandonment of servitudes, and for such further period of time as is needed to accomplish any cleanup, restoration, or mitigation activities on the servitude area, including, without limitations, any such activities mandate for compliance with regulatory permit conditions.

C. Enterprise Lou-Tex NGL Pipeline L.P. is hereby awarded thirty feet (30') of additional servitude outside and abutting the permanent servitude as described above, to be located as reflected on Exhibit "A," which is attached hereto and incorporated herein for all purposes, said additional servitude to be ued as temporary work space by Enterprise during construction and installation of the pipeline

D. Enterprise Lou-Tex NGL Pipeline L.P also is hereby awarded an additional temporary servitude in the vicinity of Plant Road. located as reflected on Exhibit "A," which is attached hereto and incorporated herein for all purposes, abutting and extending beyond the 30 feet (30') of temporary work space and the 30 foot (30') permanent servitude, to be used as temporary work space by Enterprise during construction and installation of the pipeline.

E. The temporary servitude awarded to plaintiff in paragraph C and D above are awarded for the period of time during which construction and installation of pipeline are being accomplished on the property described in paragraph A above, and for such further period of time as is needed to accomplish any cleanup, restoration. or mitigation activities on the servitudes areas, including, without limitation, any such activities mandated for compliance with regulatory permit conditions.

F. To the extent not specifically stated to the contrary here, the rights of the parties as regards the servitudes hereby awarded are to be governed by applicable provision of law.

G. The Court further finds that the servitudes herein awarded have a total value of $2,118.00 based on 100% ownership. Thus, based on the proof offered at trial, the defendants are found to own the following interests and are awarded the corresponding compensation as shown below for the property rights granted above to Enterprise Lou-Tex LP., Pipeline L.P., and for all other compensation and damage:

Defendant	Interest	Amount
Alfred Scales, III	.002354497	$4.99
Verna Francois Roberts	.028571428	$60.51
Belva Mary Lee Francois	.057142857	$121.03
Marie Yolanda Ebow	.007142857	$15.13
Mae Attrice Ebow	.007142857	$15.13
Albert Ebow, Jr.	.007142857	$15.13
Allen Anthony George	.007142857	$15.13
Lucas Savoy	.0032242	$6.83
Mary Alice Sam Jacob	.0011309	$2.40
Verna Sam	.0011309	$2.40
Faye Bordelon	.005886243	$12.47
Paul George, Jr.	.007142857	$15.13

H. The plaintiff is entitled to pay the compensation hereby awarded into the Registry of the Court for the benefit of the individuals listed above and thereupon to take possession of the property rights herein above described, all pursuant to La. R.S. 19:10.

I. The Court finding that prior to the initiation of these proceedings the plaintiff tendered to defendant Belva Mary Lee Francois an amount exceeding the true value of the servitudes awarded herein, costs are assessed against Belva Mary Lee Francois in an amount of 1/12 (one-twelfth) the costs of these proceedings, to be assessed by the clerk of court, and 1/12 (one-twelfth) of the $500 expert witness fee of Mr. Carr T. Dowell, payable to the plaintiff. All other costs are to be paid by the plaintiff.

J. The attorney fees to be awarded to Lewis Pittman are fixed in the amount of $500.00 and are to be paid by the plaintiff.

JUDGMENT SIGNED this 15th day of August, 2000, at St. Martinville, Louisiana.

s\ Paul J. DeMahy
Honorable Paul J. DeMahy
District Judge

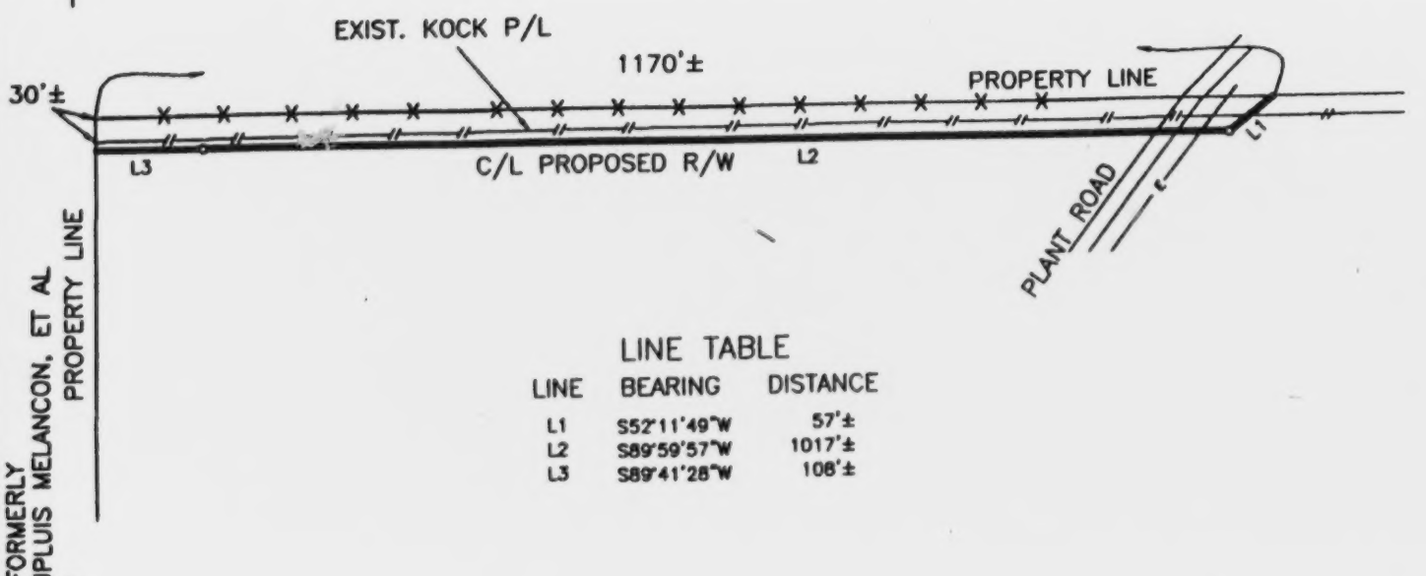
291432_1.DOC

A TRUE COPY
ATTEST s\ Toni L. Theriot
DEPUTY CLERK OF COURT

ST. MARTIN PARISH, LOUISIANA
SECTIONS 32, T9S–R7E
TRACT 5.02

APP. 22

LOUISIANA CORRDINATE SYSTEM (NAD83 SOUTH ZONE)

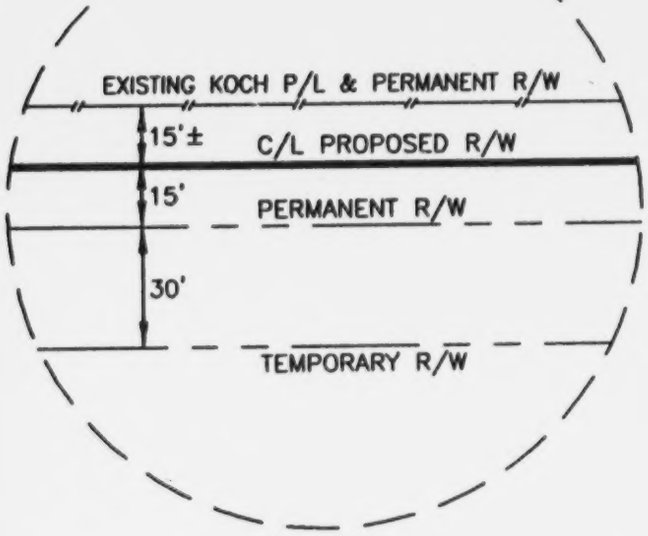


LINE TABLE

LINE	BEARING	DISTANCE
L1	S52°11'49"W	57'±
L2	S89°59'57"W	1017'±
L3	S89°41'28"W	108'±

GRAPHIC SCALE

200' 100' 0 200' 400' 600'



DETAIL
NOT TO SCALE

STATE OF LOUISIANA
DAVID E. CLOUD, SR.
REG. No. 4561
REGISTERED PROFESSIONAL LAND SURVEYOR

APPROVED _____
DAVID E. CLOUD, SR. LOUISIANA REGISTRATION NO. 4561

THIS PLAT WAS PREPARED FOR RIGHT–OF–WAY ACQUISITION ONLY. IT IS NOT A PROPERTY BOUNDARY SURVEY AND AS SUCH DOES NOT COMPLY WITH "MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS" AS ADOPTED BY THE LOUISIANA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS. UPON COMPLETION OF THE FIELD SURVEY, AN AMENDED PLAT, IN COMPLIANCE WITH THE STANDARDS, WILL BE DELIVERED TO THE SUBJECT LAND OWNER.

EXHIBIT "A"

THE ROUTE OF THE PROPOSED RIGHT–OF–WAY INDICATED HEREON IS BASED ON THE CONCHA CHEMICAL PIPELINE COMPANY RIGHT–OF–WAY MAP FOR THE SUBJECT TRACT. NO ON–THE–GROUND SURVEY WAS MADE FOR THE PURPOSE OF THIS DOCUMENT.

NO.	DATE	REVISION

ENTERPRISE LOU-TEX NGL PIPELINE L.P.

CENTER LINE OF PROPOSED
RIGHT–OF–WAY ACROSS
PROPERTY OWNED BY
TERMO COMPANY, ET AL
TOTAL RODS= 71.6±

mph
Morris P. Hebert, Inc.
PROFESSIONAL LAND & HYDROGRAPHIC SURVEYORS
P.O. BOX 3106 • HOUMA, LOUISIANA 70361–3106 • (504) 879–2731

DRAWN BY:	MPH	SHEET:	
CHECKED BY:	RCJ	SCALE:	AS SHOWN
APPROVED BY:	DEC	DATE:	3/1/00
MPH CAD FILE:	5915ROW0680A0		

United States Codes, Title 42
Section, 1981, Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every king, and to no other.

(b) *"Make and enforce contracts" defined*

For purposes of this section, the term "make and enforce contract" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) *Protection against impairment*

The rights protected by this section are protected against impairment by non governmental discrimination and impairment under color of State law.

Louisiana Revised Statute 19.2

Expropriation by state or certain corporations and limited liability companies.

Where a price cannot be agreed upon with the owner, any of the following may expropriate need property:

(8) All persons included in the definition of common carrier pipeline as set forth in R.S. 45.251

Louisiana Revised Statute 45.251

Common carrier, petroleum, pipe line defined,

As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Common carrier" includes all persons engaged in the transportation of petroleum as public utilities and common carriers for hire; or which on proper showing may be legally held a common carrier from the nature of business conducted, or from the manner in which such business is carried on.

(2) "Petroleum" means crude petroleum, crude petroleum products. distillate, condensate, liquefied petroleum gas, any hydrocarbon in a liquid state, any product in a liquid state which is derived in whole or in part from any hydrocarbon, and any mixture or mixtures thereof; provided, however, that such term shall not include methanol synthetically produced from coal, lignite, or petroleum coke.

(3) "Pipe line" includes the real estate, rights of way, pipe in line. telephone and telegraph lines or other communication systems. tank facilities as herein designated, and necessary for the proper conduct of its business as a common carrier, all fixtures, equipment and personal property of every kind owed, controlled, operated, used or managed, in connection with, or to facilitate the transportation, distribution and delivery of petroleum through lines constructed of pipe.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426
OFFICE OF MARKETS, TARIFFS AND RATES

July 14, 2000

Ms. Belva Francois
8631 Lake Crystal Drive
Houston, TX 77095

Dear Ms. Francois:

This responds to your letter dated June 29, 2000 and filed with the Office of Markets, Tariffs and Rates on July 6. Your letter seeks information concerning Federal jurisdiction and eminent domain rights with respect to a pipeline proposed by Enterprise Lou-Tex NGL Pipeline L.P. (Enterprise) in St. Martin Parish, Louisiana. I contacted Messr. Leo Bermudez and Paul Lair of Enterprise, and they confirmed that the proposed line would be used to transport natural gas liquids such as ethane, propane and butane from storage facilities in Beau Ridge, Louisiana to a separation and storage plant in Mt. Bellview, Texas. Based on my understanding of the facts you and they have presented, in my view the proposed pipeline would be regulated as a petroleum or petroleum products pipeline.

The Federal Energy Regulatory Commission (Commission) regulates such pipelines under the Interstate Commerce Act as to rates and tariffs. Under Part 341 of the regulations (18 C.F.R. 341) "each carrier must publish, post, and file with the Commission tariff publications which contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff." The tariff filing is due when service commences, and Enterprise's representatives with whom I have spoken say that Enterprise is in the process of preparing its tariff filing.

But unlike interstate natural gas pipelines, the Commission has no jurisdiction over the construction and operation of oil or products facilities, and no right of federal eminent domain attaches to such

facilities. Before constructing an interstate natural gas pipeline, the sponsor must obtain a certificate of public convenience and necessity under the Natural Gas Act by filing a complete application describing the purpose, need, design, location and environmental impact of the proposal and setting forth the rates, terms and conditions of service in a pro forma tariff. This process includes various public notices and opportunities for comment as well as notification requirements to landowners on whose property the gas pipeline would be built. At the conclusion of this process, which might take months or even years depending on the issue involved, the Commission typically issues a certificate subject to environmental and economic conditions that mitigate construction impacts and ensure open access operation. For oil and products lines, over which the Commission has no construction jurisdiction, state or local laws may apply to right-of-way easements.

I am also enclosing the pamphlet entitled "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" Although it appears that the certificate process described in the pamphlet does not apply to your situation because Enterprise' proposed facility would be a products pipeline, it does contain some information that may be useful to you. For example, it provides the Department of Transportation's (DOT) Office of Pipeline Safety's telephone number and web address. DOT is responsible for setting the safety standards for both natural gas and oil/products pipelines, and you may wish to contact them to learn more about safety requirements. You should also keep in mind that, as I stated earlier, state or local laws may govern right-of-way easements. Please feel free to contact me at 202/208-1144 if I can be of further assistance.

Very truly yours,

s\ Robert J. Cupina
Robert J. Cupina, Director
Division of Tariffs and
Rates-Central